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Analysis of Consumer Protection (E-Commerce) Rules 2020 and Draft Amendments to it

Asmita Verma^a

^aNational Law University, Delhi, India

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E-commerce and high-speed internet are a reality now. Ongoing pandemic times unveiled and exacerbated the need for safer and uncrowded markets. E-Commerce marketplaces took advantage of the situation and their share in the overall market rose to new heights. Consumers find these platforms reliable. They offer a vast and immense range of choices from which one can easily discover a desirable good. However, certain disadvantages always follow. In next to no time, big market players, especially foreign corporations, acquired a dominant position in the Indian market. This in turn is negatively affecting not only small and medium businesses but also consumer interests. Consumer rights lay vulnerable in the hands of these entities. Several complaints of the sale of counterfeit goods from what was presented are reported. The platforms largely remain unregulated in India. The need to regulate e-commerce was earnest. To streamline the functioning of these platforms with consumer interests, Consumer Protection (E-Commerce) Rules 2020 (hereinafter called 'Rules') were issued by the Ministry of Consumer Affairs, Food and Public Distribution on July 23, 2020. However, according to various experts, these rules did not address certain issues adequately. To bridge those gaps, the government proposed draft amendment rules in July 2021. However, these draft rules to are coming under scrutiny with certain provisions being described as unnecessary and harsh.

Keywords: *inventory e-commerce, marketplace e-commerce, sellers, grievance redressal.*

CONSUMER PROTECTION (E-COMMERCE) RULES 2020

The e-commerce entity is defined as:

“Any person who owns operates or manages digital or electronic facility or platform for electronic commerce but does not include a seller offering his goods or services for sale on marketplace entity.”¹

MARKETPLACE AND INVENTORY E-COMMERCE ENTITY

Marketplace and inventory e-commerce entities are distinguished for regulation. An inventory e-commerce entity owns the inventory of goods or services and sells them directly to the consumers.² This entity is different from a seller.³ The seller is the procurer or original manufacturer or owner of the goods while the inventory e-commerce entity gets control and ownership of the goods only when the seller has allowed so. Since then, the entity will be responsible for storing the goods and their labelling, and packaging for delivery to the consumers.⁴ “A marketplace entity means an entity which provides an information technology platform on a digital and electronic network to facilitate transactions between buyers and sellers.”⁵ They primarily facilitate the transaction between a buyer and the seller by providing a platform for them. They virtually exercise no control over the representation and information provided by the sellers on their platform. Foreign companies as defined in s 2(42) of the Companies Act, 2013 will be required to comply with the Rules, controlled or owned by a resident of India.⁶

The application of these Rules to ‘any activity carried out by a natural person in a personal capacity not being part of any professional or commercial activity undertaken on a regular or

¹ Consumer Protection (E-Commerce) Rules, 2020, s 3(1) (b)

² Consumer Protection (E-Commerce) Rules, 2020, s 3(1) (f)

³ Devanshu Khanna & Vrinda Bagaria, ‘Consumer Protection In The Online Marketplace- An Analysis Of Consumer Protection (E-Commerce) Rules, 2020’ (*Live Law*, 17 August 2020)

<<https://www.livelaw.in/columns/consumer-protection-in-the-online-marketplace-an-analysis-of-consumer-protection-e-commerce-rules-2020-161516>> accessed 05 July 2022

⁴ Ibid

⁵ Consumer Protection (E-Commerce) Rules, 2020, s 3(1) (g)

⁶ Consumer Protection (E-Commerce) Rules, 2020, s 4(1) (a)

systematic basis will be exempted.⁷ This means, for instance, a person who put forth his goods for selling on online platforms like OLX, Quickdeal, etc. will not be under its scanner if the same does not form part of his/her professional or commercial purpose.

DUTIES AND LIABILITIES

The duty to disclose various kinds of information is laid on E-Commerce entities to ensure the protection of consumer rights and help them to make informed decisions. The Rules address the issue of refunding the value of purchased goods which remains one of the major concerns of consumers. E-commerce entities and sellers are obligated to withdraw goods or services that are already paid for, in case they are found defective, spurious, different, or deficient. E-Commerce companies are restricted from indulging in unfair or restrictive trade practices whether in course of their business or otherwise.⁸ The act lays down a wide range of such practices as false information, misrepresentation, etc. The entities, in case of sale of imported goods on its platform, shall ensure to provide the name and details of the such importer.⁹ They can also collaborate with National Consumer Helpline, though, voluntarily.

Consumers cannot be made to pay assertively in the name of cancellation charges unless it has to bear the same charges on unilateral cancellation. The consent of the consumer shall be explicit and should not be taken in form of pre-checked boxes. No such entity can manipulate the price of goods or services offered on its platform to gain unreasonable profits under certain situations.¹⁰ These are one of the major concerns where the entities, after inflating the MRP, offer lucrative discounts to attract consumers.¹¹ Furthermore, they are not permitted to discriminate between consumers of the same class or to arbitrarily classify the consumers.¹² This, will however not disallow entities to put consumers in the premium category that are willing to pay

⁷ Consumer Protection (E-Commerce) Rules, 2020, s 2(1)

⁸ Consumer Protection (E-Commerce) Rules, 2020, s 4(3)

⁹ Consumer Protection (E-Commerce) Rules, 2020, s 4(6)

¹⁰ Devanshu Khanna & Vrinda Bagaria (n 3)

¹¹ *Ibid*

¹² *Ibid*

extra charges for the said purpose.¹³ The information on modes of payment, guarantee, return, refund, delivery, shipment, and others need to be provided on their platforms.

The marketplace e-commerce entities have responsibility concerning the sellers on their platforms. They need to display clearly, certain details of sellers like their business name, address, customer care number, and other information provided by the sellers themselves. On written request by any consumer, they must provide the details of the seller, from where there was purchase, for dispute resolution. Section 5(5) of the Rules provides for appropriate steps against any violation of Intellectual Property Rules. The record of those sellers who offered the goods or services disabled under The Trade Mark Act, 1999, Copyright Act, 1957 or the IT Act 2000 has to be maintained by the entities.¹⁴ However, it can be done voluntarily and not compulsorily.

The inventory e-commerce entities will have to mention clearly on their platforms, the breakup of various charges involved during the purchase of goods and services, like delivery, conveyance, handling, postage, and applicable tax. Along with marketplace entities, sellers on these platforms, described in sec 2(37) of CoPRA, 2019, have certain duties and liabilities as product sellers. Any engagement in unfair trade practices, misrepresentation of goods and services, or posting fake reviews on the platforms is prohibited in the interest of consumers' right to meaningful choice. The seller needs to provide the information required by the marketplace e-commerce entity for the purpose of display. In the case of imported goods, the seller has to provide details of the importer as well as guarantees regarding the genuineness of imported products.¹⁵

GRIEVANCE REDRESSAL

To address the issues of consumers directly, the e-commerce entity, along with the sellers on its platform, has to establish an appropriate grievance redressal system on their respective ends

¹³ *Ibid*

¹⁴ Consumer Protection (E-Commerce) Rules, 2020, s 4(3)

¹⁵ Consumer Protection (E-Commerce) Rules, 2020, s 6(5) (f)

and employ a grievance officer for the redressal of complaints.¹⁶ The details of such officers must be displayed on the platform. The grievance officer has to concede the complaint within 48 hours and resolve it before one month thereon.¹⁷ A ticket number has to be issued over each complaint and displayed on the platform to facilitate consumers to track their complaints.¹⁸

DRAFT AMENDMENTS TO CONSUMER PROTECTION (E-COMMERCE) RULES 2020

The Government introduced draft amendments to E-Commerce rules 2020 in the public domain on 21 June 2021. With the objective to closely regulate e-commerce entities and enhance the protection of consumers, the new rules introduced various provisions. However, they are going beyond the scope of the parent act CoPRA. They are also scrutinized for being in non-alignment with the existing regulatory framework. Its conflation and transgression can be seen with other legislations like Competition Act 2002 and Personal Data Protection Bill 2019.

GOING BEYOND ITS SCOPE

Competition Act 2002

While for both consumer law as well as competition law, consumer interest is the key idea, they perform different roles. While Competition Act 2002 aims to regulate competition in the market, Consumer Law aims to prevent violation of consumer rights and unfair trade practices, and redressal of consumer grievances. In the draft rules under sec 5(17), the e-commerce entities will be prohibited from the abuse of the dominant position. The term 'abuse of dominant position' will mean the same as given in Competition Act 2002. Reiterating this in consumer law can lead to possible jurisdictional overlap between Consumer Protection Authority and CCI.¹⁹ The Rules grant those regulatory powers to CPAs that are already present with CCI. They are also

¹⁶ Consumer Protection (E-Commerce) Rules, 2020, ss 4(4) and 6(4) (b)

¹⁷ Consumer Protection (E-Commerce) Rules, 2020, ss 4(5) and 6(5) (e)

¹⁸ Consumer Protection (E-Commerce) Rules, 2020, s 5(3) (b)

¹⁹ Ayush Tripathi & Abhishek V., 'A Misplaced Assertion: Harmonisation of Regulations Is Crucial for the Growth of E-Commerce in India' (SCC Online, 4 October 2021)

<https://www.sconline.com/blog/post/2021/10/04/a-misplaced-assertion-harmonisation-of-regulations-is-crucial-for-the-growth-of-e-commerce-in-india/> accessed 05 July 2022

proposing a ban on flash sales to prevent e-commerce entities from giving preference to certain sellers and restrict the listing of associated or related parties on their platforms.

The legality of both these issues is already under investigation in CCI, which considers them on a 'case-to-case basis. Any complete restriction on the listing of parties can eliminate the possibility of dealing with associated parties completely on the tenuous ground that it will always harm consumer interest.²⁰ Even it seems unconcerned about the fact that flash sales benefit the consumers through reduced prices and increases competition in the market. Any interim legislation may hamper the investigation by CCI.²¹

Information Technology Act, 2000

The e-commerce entities have to provide the information in their possession or control to any government organization that is lawfully authorized for cyber security, investigative or protective activities.²² This will be collected for verification of identities or investigation, prevention, prosecution, or detection under the law or cyber security incidents.²³ It requires the e-commerce entities to coordinate with law enforcement under certain situations. Enforcement of the law is out of the objective of CoPRA, which is to protect consumers. IT Act of 2000 provides for the regulation of online platforms and obliges them to provide information as intermediaries. Bringing them again under a law of consumer protection can be unnecessary. They also did not clarify the kind of information that can be sought and the procedure to collect it. It can prove detrimental to consumer protection itself since the data that e-commerce entities possess can be the personal data of the consumers.

²⁰ Neelambara Sandeepan, "Draft E-Commerce Rules: Blurring the Lines between Consumer Protection and Competition Law" (*Lakshmikumaran & Sridharan*, 27 July 2021)

<<https://www.lakshmisri.com/insights/articles/draft-e-commerce-rules-blurring-the-lines-between-consumer-protection-and-competition-law/>> accessed 01 April 2022

²¹ Ayush Tripathi & Abhishek V. (n 19)

²² Consumer Protection (E-Commerce) Amendment Rules, 2021, s 5(18)

²³ *Ibid*

Personal Data Protection Bill, 2019

Under sec 14(e) of the draft amendment rules, without the express consent of any consumer, an e-commerce entity cannot share its information with any other person. However, an appropriate authorized data protection authority should enforce data protection laws. Certainly, this section conflates with the jurisdiction of such authority under the proposed Personal Data Protection Bill 2019.s

EXCESSIVE COMPLIANCE BURDEN ON E-COMMERCE

Certain provisions under proposed draft rules, to tighten the curb, can have the effect of placing an excessive compliance burden on e-commerce entities.

Robust grievance mechanism

A more robust grievance redressal mechanism needs to be set up by the e-commerce entities proposed by the draft Rules. A Chief Compliance Officer has to be appointed by every e-commerce entity that will be answerable for compliance with the Rules.²⁴ For proceedings related to data hosted by the e-commerce entity or third-party information, CCO can be held liable. Furthermore, a nodal contact person has to be appointed to coordinate with the law enforcement agencies and officers regarding compliance with the Act and Rules.²⁵ They are also required to appoint a Resident Grievance Officer to address consumer grievances.²⁶ They must be citizens and residents of India. Complete details of all these officers have to be displayed on their platforms. However, these platforms already have to make these appointments as intermediaries under the IT Act 2000. Furthermore, the entities must associate themselves with the National Consumer Helpline mandatorily which was not before.²⁷

²⁴ Consumer Protection (E-Commerce) Amendment Rules, 2021, s 5(5) (a)

²⁵ Consumer Protection (E-Commerce) Amendment Rules, 2021, s 5(5) (b)

²⁶ Consumer Protection (E-Commerce) Amendment Rules, 2021, s 5(5) (c)

²⁷ Consumer Protection (E-Commerce) Amendment Rules, 2021, s 5(8)

Fall back liability

A provision of fallback liability is provided under section 3(1)(d) of the draft Rules which is scrutinized as being a harsh law. "Fall back liability means the liability of a marketplace e-commerce entity where a seller registered with such entity fails to deliver the goods or services ordered by a consumer due to negligent conduct, omission or commission of any act by such seller in fulfilling the duties and liabilities in the manner as prescribed by the marketplace e-commerce entity which causes loss to the consumer."²⁸ E-commerce entities exercise very less or no control over the functions that sellers are to perform like delays in manufacturing or supply side. They claim themselves to be mere intermediaries between sellers and consumers.

CONCLUSION

With the rise in the shares of e-commerce platforms in the market, it is essential to have a law in place above them. The consumer base has expanded drastically over these platforms since the technological revolutions across the world. The pandemic aggravated the need for such platforms with safety and comfort as the benefactor. However, just like a physical market, instances of consumer rights violation and exploitation on these platforms were increasingly reported across the world. A need for their regulation under the consumer law was felt everywhere. In India, e-commerce entities were governed as Intermediaries under the IT Act of 2000. There was no mechanism to control e-commerce entities under consumer law until the Consumer Protection (E-Commerce) Rules 2020 were notified under CoPRA 2019. The rules brought them under consumer law and their regulation guidelines were laid down. The e-commerce entities that were operating and offering their services including foreign firms were designated under the rules. Various duties and liabilities were laid down upon marketplace and inventory e-commerce entities to safeguard consumer interest. All the details regarding the entity as well as the sellers have to be displayed on its platform in a clear and accessible manner for the users' knowledge. The details of refund, return, exchange, shipment, delivery, etc. have to be provided. The consumers benefitted by not bearing the cancellation charges. The consent

²⁸ Consumer Protection(E-Commerce) Amendment Rules, 2021, s 3(1) (d)

of consumers has to be expressed and not in form of pre-checked boxes. The rules were empowering the consumers in a way. However, they were the initial step towards achieving bigger goals. The government proposed amendments to the E-Commerce 2020 to widen the ambit of consumer protection in the arena of e-commerce. The practice of misspellings, cross-selling and misleading advertisements on these platforms was brought in. A more robust grievance mechanism requirements were put on the e-commerce entities with several grievance officers to be appointed for consumer redressal as well as for compliance with the rules. The data of consumers could not be used for any unfair trade practices. However, some provisions were unacceptable to the entities like fallback liability and specification of the country of origin. Furthermore, the amendment rules seem to conflate with the other legislations like IT Act, 2000. With no overarching data protection law in place in India, the area of consumer data protection and privacy on these platforms remains vague. Seeking to regulate the e-commerce arena, the government must take a balanced approach to encompass the interests of both consumers as well as e-commerce entities.